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Residential Property
TRIBUNAL SERVICE

REF: LON/00BA/LSC/2007/0327

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD & TENANT ACT 1985, SECTION 27A

PROPERTY:	**8, THE MEADS, WANDLE ROAD, MORDEN, SURREY SM4 6AH**
APPLICANT:	**VALE HOUSE MANAGEMENT LIMITED**
RESPONDENTS	**(1) HUGH WALTER SMITH** **(2) JUNE AMELIA SMITH**
APPEARANCES:	**MR B. GOLDSTONE (TREASURER)** **MR R. FORSTER (CHAIRMAN)** **MR. T. BUADU (DIRECTOR)**
FOR THE APPLICANTS	**MR HUGH SMITH** **MR MARTIN SMITH** **MR JOHN GOLDFINCH (College of Law)** **MR SIMON SAITOWITZ (College of Law)**
DATE OF HEARING:	**15TH NOVEMBER 2007**
DATE OF DECISION:	**22nd NOVEMBER 2007**
MEMBERS OF TRIBUNAL	**MR S. SHAW LLB (HONS) MCIArb** **MR T. JOHNSON FRICS** **MRS S. JUSTICE BSc**

DECISION

Introduction

1. This case involves a dispute concerning 8, The Meads, Wandle Road, Morden, Surrey, SM4 6AH, ("the property"). The case originally started in the Croydon County Court but by order of that Court dated 22 August 2007, the matter was transferred to this Tribunal for determination. The Claimant in the County Court case, and the Applicant in this case, is Vale House Management Limited ("the Applicant"). The Applicant is the management company which is a party to the relevant lease and which is charged with the responsibility for the maintenance of the common parts to which this application refers. The property is one of 17 two bedroom units on a small residential development close to the River Wandle in Morden called "The Meads". More precisely, one block in the building contains 15 flats and the other block comprises two maisonettes of which the property is one. The long leaseholders of the property are Mr and Mrs H.W. Smith ("the Respondents").

The Hearing

2. The hearing of this matter took place on 15 November 2007. On that occasion the Applicant was represented by Mr B. Goldstone who is the Treasurer of the Applicant, and resides at Flat 6, Mr R. Forster, who has been a long serving Chairman of the Applicant and resides at Flat 2, and Mr. T. Buadu, who is one of the Directors of the Applicant and resides at Flat 3. The Respondent, Mr Hugh Smith, attended in person and was assisted by his son Mr Martin Smith. In addition, the Respondents generally were represented by Mr John Goldfinch and Mr Simon Saitowitz of the College of Law. Both sides had prepared very full and useful bundles of documents together with factual and legal submissions.

3. The Applicant's case as indicated, was very fully set out in their bundle. That bundle contains details of the service charge accounts for the period from 1998 to 2006 which

is the period in dispute in this case. It is the Applicant's case that since the end of the service charge year during 1997, the Respondent has paid nothing whatever towards the service charges on the Estate. In fact, this is not in dispute as far as the Respondent is concerned. The result of this is that arrears of £2,462 have accumulated as itemised at page 6 in the Statement of Case prepared on behalf of the Applicant and appearing at the commencement of the Applicant's bundle. That itemisation is supplemented by full service charge accounts for each of the relevant years which are set out as spreadsheets at Tab 2 of the bundle.

4. These accounts are further broken down into individual invoices which are set out in schedules at Appendix 3 of the bundle. Moreover, the Applicant has produced its audited accounts for each year, its bank statements and the primary contractors' receipts for the charges which have been made, together with service charge bills. Given all of this material, the Respondents were requested to identify, at the start of the hearing, the particular heads of service charge which were disputed and to explain the nature of such dispute in each case.

5. Mr Goldfinch, on behalf of the Respondents, explained to the Tribunal that the response to the Applicant's case was set out at pages 1 to 5 in the Respondents' bundle and in the context of the "Response to Applicant's Statement of Claim" – which was produced pursuant to the Directions issued in this Tribunal on 17 September 2007. The Tribunal was informed that no specific challenge relating to particular charges was mounted by the Respondents, or at any rate the Respondents were not in a position to substantiate any such challenge, nor were the Respondents contending that works which had been carried out were either excessively priced or carried out at to less than a reasonable standard.

6. Instead, the Respondents' case was that over many years (stretching back to 1993, the time that the Respondents moved into their maisonette) there had been various failures to carry out works which were desirable and needed on the Estate, and that

these constituted breaches of covenant within the context of the Respondents' lease. Mr Goldfinch did not put the Respondents' case on the basis that whatever value should be attributed to these alleged breaches amounted to some kind of set-off against the service charges claim – he recognised that such a claim was perhaps more appropriately brought by way of a damages claim for breach of covenant in the County Court. Instead, he indicated that these breaches, if the Tribunal was satisfied they had occurred, were matters to be taken into account generally by the Tribunal in deciding whether the service charge and claims made were reasonable within the meaning of the Landlord & Tenant Act 1985.

7. Neither he nor Mr Saitowitz had any alternative figures to put to the Tribunal. They called no evidence other than Mr Smith himself. They had no alternative quotations nor any invoices in respect of costs incurred by the Respondents as a result of the alleged breaches of covenant. When asked how the Respondents contended these alleged breaches should impact upon the service charge claims, the Tribunal was informed that the Respondents were content to leave this to the general discretion of the Tribunal. When asked whether the Respondent was challenging the whole of the claim or only part of it, and if so what part, Mr Martin Smith on behalf of his father, indicated that *"That is a good question"* – but nobody on behalf of the Respondents appeared to be in a position to supply an answer.

8. This placed the Tribunal in some difficulty in quantifying the nature of the Respondents' objection to these charges but, nonetheless, the Tribunal heard evidence and submissions from the Respondents about the particular shortcomings alleged against the Applicant in order to discover whether these were matters of relevance in relation to the service charge claim. It is proposed in the circumstances to deal with these allegations, to set out the response of the Applicant to the allegations, and to give the Tribunal's conclusion in turn to each allegation.

Analysis of Evidence

9. The obligations of the Applicant in respect of the Estate or Development are as set out at clause 4(1) of the lease which can be found in the Respondent's bundles and also extracted in the Applicant's Statement of Case at page 12 of that Statement of Case. Clause 4 lists various types of specific works of repair and maintenance together with discharge of various other outgoings and services relevant to the development. There is a final "catch-all" clause providing a covenant:

"Generally to do all other things reasonably desirable to maintain the development as respectable blocks of private residential flats."

The decision as to the works to be funded by the company is, as might be expected, to be agreed by all the leaseholders at a general meeting which convenes twice a year and to which all leaseholders are invited and may attend. The Tribunal was informed that Mr Smith is a regular attender and contributor to discussion at such meetings.

10. The first matter raised on behalf of the Respondents was to the effect that soon after moving into the premises in 1993 and during 1994 and 1995 there were problems with disposal of rubbish, and random fly-dumping within the development. Despite requests to the management company to deal with these issues, the Respondent's case is that they were ignored and at a personal cost of £120 he had to dispose of the rubbish. In addition, in order to avoid the dumping, he erected and paid for a wooden fence surrounding the problem area which in the event prevented further problems. This cost a further £180.

11. There were no invoices produced to authenticate these figures, but in the event they were not needed because those representing the Applicant indicated that they did not wish to dispute these issues with the Respondents, and for the purposes of this case, were prepared to agree that they had incurred this expenditure and that these were matters which should have been attended to by the Applicant. The figures themselves

seemed reasonable to the Tribunal and given the lack of contention between the parties on this matter, the Tribunal finds that it would be appropriate for credit to be given against the overall service charge for the combined value of this work in the order of £300.

12. A further complaint was that the Applicant had failed, through its gardening services, to deal with an allegedly badly overgrown hedge bordering the property and that the Respondents have to this day had to trim the hedge themselves. Moreover, there were some large shrubs or bushes adjacent to the garage of the other maisonette to which the property is attached which were causing problems with the guttering or roof and again the Respondent dealt with the bushes himself. The Applicant's position was that the gardening is perfectly adequately carried out by the gardener who deals with the development generally. The first named Respondent, Mr Smith, had taken it upon himself specifically to care for part of the common parts or garden adjacent to his maisonette which he seems to use specifically and to care for specifically. Whilst he has not been prevented from doing this, he has no entitlement to insist upon the same meticulous attention to be given to this area as he would give to it himself, and to use this as a basis for withholding service charge. The Tribunal agrees with this contention on behalf of the Applicant. On the evidence, the Tribunal was satisfied that the general level of gardening care arranged by the Applicant was adequate and consistent with the charges made.

13. A further allegation was made to the effect that in works carried out by him for which he produced an invoice dated 19 May 1996, appearing at Tab 6 of the Applicant's bundle, Mr Smith painted and decorated the main block of flats at the development for which he charged £1,800. However, in the context of this dispute, he contended that he had also, as part of that work, cleared and serviced the gutters of the maisonettes, and possibly the main block as well, for which he had made no separate charge. He argued, so it was understood, that he had raised no separate invoice or charge for this because at the time this particular dispute had not arisen and he was

happy to do the work gratuitously. However given the issue which has now arisen, he wished to be given credit in the sum of £300, which is how he would evaluate the cost of the works that he carried out, but for which he did not charge.

14. The Tribunal was not especially impressed with this claim. On further questioning, once again, the Respondents were apparently not challenging any particular invoice incorporated in the Applicant's service charge. Nor did they point to any specific savings which might have been enjoyed by the Applicant resulting from the Respondents' work. Indeed, the Applicant indicated that this was all a very long time ago and they had no idea whether this work had been done or not – but that they would have considered it had an invoice been presented. They had indeed been calling for invoices for any matters for which the Respondent sought recognition, but had received no invoices at all. They showed the Tribunal separate charges which they had incurred for carrying out gutter work. The Tribunal accepted what was said on behalf of the Applicant in this regard. It did not seem satisfactory to the Tribunal for the Respondent to raise a charge now for work allegedly carried out some 11 years ago, and which was incapable of proper investigation at this stage. In any event, as already indicated, no focussed challenge was made to a specific service charge to which this contention might relate.

15. The next allegation made by the Respondents was that the lighting at the rear of the maisonettes was allegedly inadequate, as a result of which there had been several attempted burglaries. The Respondents were aggrieved that the Applicant had done nothing to install further or better lighting. The Respondents in the event installed their own lighting, powered by their own electricity and allegedly costing some £300. No invoice or documentary evidence to support this charge was produced of any kind.

16. The Applicant said that there was no clear obligation under the lease for such provision to be made for the Respondents' property but that in any event they had

investigated the possibility of carrying out such work. The result of the investigation was that they were advised that, because a small internal road separates the maisonettes from the main block, it was impracticable to run a cable underneath that road or above it and there was no easy and reasonably economic way to provide the extra lighting requested by the Respondents.

17. Although the Respondent himself suggested how a supply of electricity might have been created (he was himself a master builder) no kind of evidence was produced on behalf of the Respondents to demonstrate how this might have been achieved or at what cost. The Tribunal accepts the submissions on behalf of the Applicant that burglaries were a risk for everybody on the development, that the possibility of providing the further service suggested by the Respondent had been adequately investigated and that there was no particular breach demonstrated by the decision not to proceed with such work, which would impact upon the service charge claimed.

18. As mentioned above, Mr Smith himself worked as a builder and decorator and has always looked after the exterior decorations of the maisonette (and indeed the adjoining maisonette) himself. The Tribunal's understanding of the evidence was that there was actually an agreement to the effect that he could carry out his own decorations at some stage. The thrust of the allegation appeared to be that despite this, he had been charged for external decorations. This allegation appeared to be based on the fact that an invoice dated 13 June 2005 had initially been presented to him for such external decorations in the sum of £150. However, Mr Goldstone confirmed (as did the service charge accounts) that in fact on each occasion that painting and decorating had occurred, no charge had been made to the Respondents. The documents appear to confirm this, and there was no challenge in this regard so far as the Respondents were concerned. On the evidence the Tribunal is satisfied that there has been no over-charging of the Respondents in this respect.

19. At paragraphs 18 and 19 of the Respondent's Statement of Case, the Respondents contend, as expanded in oral argument and evidence, that there were persistent problems spanning the period from 1994 to 2003 concerning unlawful parking in the Development. They contend that despite reporting the matter to the Applicant, no action was taken. Accordingly, they purchased for themselves 2 "clamping zone" signs (at a cost of some £100) and also notified the local authority, as a result of which single yellow and single white lines were painted in the relevant areas – at a further cost of £40. These 2 steps have apparently cured the problem without significant recurrence.

20. For the Applicant it was said that it did not regard this as properly the function of the Applicant under the lease – although it was conceded that it might arguably fall within the "catch-all" provision referred to above. It was also accepted that, perhaps the Applicant might have been more proactive at relatively low cost to the residents generally. The Tribunal is of a similar view, and in the circumstance considers that a modification of the overall charge for general repairs, in the order of £140 would be appropriate to render the charge reasonable within the meaning of the Act.

Conclusion

21. The result of the findings above is that deductions in the total sum of £440 are appropriate from the sum claimed. The Tribunal determines that the balance of £2022 is the reasonable sum payable within the provisions of the Act, for the reasons set out above. No applications for orders for costs were made on either side, and none are made.

Legal Chairman: S.Shaw

Dated: 23rd November 2007